CTIA
Building The Wireless Future
Cellular Telecommunications & Internet Association

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January 16, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

Re: *Ex Parte Presentation*
CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200
95-116, 98-170, and NSD File No. L-00-72

Dear Ms. Dortch:

On January 15, 2003, Michael Altschul, Diane Cornell and Bruce Cox of the Cellular Telecommunications & Internet Association ("CTIA"), Anne Hoskins of Verizon Wireless, Charles Keller representing Verizon Wireless, Laura Phillips representing Nextel, Peter Connolly representing United States Cellular Corporation and Roger Sherman of Sprint met with Eric Einhorn, Acting Division Chief, Diane Law Hsu, Acting Deputy Division Chief, Paul Garnett, Staff Attorney and Vickie S. Byrd, Staff Attorney in the Telecommunications Access Policy Division of the Wireline Competition Bureau.

At the meeting, the industry participants urged the Commission to clarify four issues discussed in the December 13, 2002, Universal Service Contribution Methodology Report and Order. First, the participants urged the Commission to specifically clarify the Order to confirm that carriers may use a company-specific factor of interstate traffic to show interstate revenues for contribution purposes. Second, the participants also urged the Commission to clarify the Order to confirm that carriers may use the same company-specific factor to determine interstate revenues on each individual customer bill for the purpose of computing individual recovery surcharges. Third, the participants requested that the Commission clarify that the definition of "affiliate" for the purpose of the Order means companies actually under common control and/or common operation. Finally, the participants urged the Commission to provide additional advance notice of changes to the USF quarterly contribution factor in order to allow carriers sufficient time to implement the new factor into their billing systems.

In order to further detail these clarifications, the participants distributed a handout, which is attached, delineating specific language that could be used to clarify these issues. In addition, the participants also noted the need for a rapid resolution of these clarifications so that affected carriers could modify internal billing systems to adapt to the changes in the USF contribution methodology.

Pursuant to Section 1.1206 of the Commission's rules, this letter and attachment is being filed with your office. Should you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

Michael Altschul

Michael Altschul

Attachment

cc: Eric Einhorn
Diane Law Hsu
Paul Garnett
Vickie S. Byrd

Universal Service Contribution and Recovery
January 2003

Issues for clarification:

1. Carriers may use a company-specific factor of interstate traffic to show interstate revenues for contribution purposes.
2. Carriers may use the same company-specific factor to determine interstate revenues on each individual customer bill for purposes of computing the recovery surcharge.

Wording of Order and rules are not clear:

- "Mobile wireless providers [not using the safe harbor] will still have the option of reporting their *actual* interstate telecommunications revenues." (¶ 24)
- "[I]f the contribution factor is 7.28 percent, a carriers' federal universal service line-item cannot exceed 7.28 percent of the total of the interstate portion of the charges for telecommunications service on each customer's bill." (para 51)…
- "For CMRS providers, the portion of the total bill that is deemed interstate will depend on whether the carrier reports *actual* revenues or utilizes the safe harbor. For wireless telecommunications providers that avail themselves of the interim safe harbors, the interstate telecommunications portion of the bill would equal the relevant safe harbor percentage times the total amount of telecommunications charges on the bill." (n.131)
- "If a telecommunications carrier chooses to recover its federal universal service contribution costs through a line item on a customer's bill, as of April 1, 2003, the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor." (§ 54.712, as revised)

Paragraph 24 Should be Corrected as follows:

"Mobile wireless providers [not using the safe harbor] will still have the option of reporting their interstate telecommunications revenues by developing a company-specific proxy of actual interstate revenues."

FN 131 Should Be Corrected as Follows:

For CMRS providers, the portion of the total bill that is deemed interstate will based upon either the safe harbor or the company-specific proxy of actual interstate revenues For wireless telecommunications providers that avail themselves of the interim safe harbors, the interstate telecommunications portion of the bill would equal the relevant safe harbor percentage times the total amount of telecommunications charges on the bill." (n.131) For wireless telecommunications providers that develop a company specific proxy of actual interstate revenues, the interstate portion of the bill would equal the proxy percentage times the total amount of telecommunications charges on the bill.

Paragraph 24 Should be Corrected as follows:

"Mobile wireless providers [not using the safe harbor] will still have the option of reporting their interstate telecommunications revenues by developing a company-specific proxy of actual interstate revenues."

FN 131 Should Be Corrected as Follows:

For CMRS providers, the portion of the total bill that is deemed interstate will based upon either the safe harbor or the company-specific proxy of actual interstate revenues For wireless telecommunications providers that avail themselves of the interim safe harbors, the interstate telecommunications portion of the bill would equal the relevant safe harbor percentage times the total amount of telecommunications charges on the bill." (n.131) For wireless telecommunications providers that develop a company specific proxy of actual interstate revenues, the interstate portion of the bill would equal the proxy percentage times the total amount of telecommunications charges on the bill.

The Two Proposed Corrections Should Be Made for the Following Reasons:

- Revised safe harbor (28.5%) is based on a range of company-specific traffic data studies to estimate actual revenues. (¶ 22)
- Carriers using the 28.5% safe harbor may apply that safe harbor to a customer's bill to determine the customer's assessment, irrespective of a specific customer's actual interstate usage or the actual interstate revenue received from a specific customer. (¶ 51 & n.131) A company-specific factor (or proxy) should be used the same way. (If the company's factor is lower than the 28.5% safe harbor factor, the end user customer's USF charge will be lower.)
- There was no evidence in the record that any wireless carrier could measure interstate revenues for contribution purposes other than through aggregated traffic studies.
- There was no evidence in the record that carriers could determine the proportion of interstate traffic on a customer-specific basis to recover contribution costs from customers. Rather, some carriers have developed the capability to conduct

aggregated studies of their traffic flows to determine a reasonable proxy of the proportion of interstate traffic, which in turn provides a reasonable proxy of a carrier's proportion of interstate revenue.

- FNPRM seeks comment on methodologies for using carrier traffic studies to determine "actual" interstate end-user telecommunications revenues, citing to the CTIA traffic study ex parte. The FCC cited to the same ex parte to support setting the revised safe harbor at the highest end of the range of study results in order to create an incentive for carriers to "report their actual interstate telecommunications revenues if they are able to do so." The CTIA letter demonstrated the ability for some carriers to do so through conducting aggregated traffic studies. (¶ 68 and 22)

Need for rapid resolution

- The Order requires carriers to apply the new billing rules on April 1, 2003.
- FCC clarification is necessary because carriers must provide notice to customers before implementing a billing change (usually at least 30 days prior to the billing change).
- Requisite billing system changes are significant. Carriers need clarity in order to ensure that appropriate billing changes are made to enable compliance.

As we discussed, Paragraph 26 of the "contribution factor" order, released December 13, 2002, provides that if one "wireless entity" chooses to report revenues and contribute based on "actual" interstate telecommunications revenues, "all affiliated companies subject to the same safe harbor must do the same." Conversely, if one "affiliated" carrier uses the safe harbor percentage, all must do so. For the purposes of those requirements, the FCC, in Paragraph 26, defines "affiliate" as "a person that (directly or indirectly) owns or controls,or is owned or controlled by, or is under common ownership and control with, another person." The FCC says its definition is "consistent with" Section 3(1) of the Act [47 USC Code 153(1)]. That section defines "affiliate" as follows:

"...'affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For the purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more that 10 percent."

What this appears to mean is that if two wireless licensees (or parent companies) have in excess of 10 common ownership all of their subsidiaries would have to have the same practice with respect to making universal service contributions. Obviously, this will not pose a problem for companies which are actual common ownership and/or control, as in the case of "sister" majority or wholly owned subsidiaries of a common parent company. However, if wireless entities have in excess of 10 percent common ownership but are not in fact under common control or common operation pursuant to management agreement, this requirement will pose a large problem. Such companies usually do not(and indeed, in many instances, for anti-trust reasons, cannot and should not) consult each other about pricing or billing decisions or about how to approach regulatory requirements of this kind.

This requirement will force common policies on carriers which did not have attributable interests in each other under Section 20.6(d)(2) of the FCC's rules, the former spectrum cap, which did not count non-controlling overlapping interests of less than 20%. There is no good reason to do this. This would appear to an inadvertent effect of an overly broad definition for this purpose.

It should be clarified that "affiliate" for the purposes of this requirement means companies actually under common control and/or common operation. That would meet the FCC's legitimate objectives while not requiring carriers to engage in concerted behavior which is unnecessary and may be unlawful.